The Jones Family Trusts

This California litigation arose out of legal services provided by the insured, John Smith, for the claimants, Bob and Bill Jones, in connection with transactions involving the assets of certain trusts for the benefit of the claimants and their sister, Christy Brown. For more than 25 years, the insured was the Jones family's attorney, having represented several members of the family in various legal matters, including trust and estate matters. This case arose from the insured's alleged representation of the claimants in or around late 2005 in connection with their pursuit of claims against Brown, as trustee and/or purported trustee of two Jones family trusts, as well as the insured's alleged self-dealing involving an interest in rental income that the claimants had granted to the insured from 2002 to 2006 from trust assets.

At the outset of this matter, the claimants' counsel provided a draft complaint and invited pre-litigation discussions. Those discussions were unsuccessful and the claimants ultimately filed a complaint, which was later amended to allege that the insured:

- Took action that suppressed the will of their father, Larry Jones, who passed away in 1999
- Engaged in self-dealing with respect to Irrevocable Trust No. 1 prepared for the claimants' parents in 1984
- Failed to protect the assets of Irrevocable Trust No. 2, also prepared for the claimants' parents in 1984
- Engaged in self-dealing with respect to the assets held in the Eileen Jones Family Trust
- Committed malpractice in advising the claimants to settle their claims with their sister and obtaining a release for himself (i.e., the insured) and MacDonald Farms Associates, a general partnership in which the insured owned an interest.

The claimants sought in excess of $13 million from the insured.

The liability of the insured was questionable in some respects and unfavorable in others. The claims relating to the alleged suppression of the will and those allegations relating to the assets of the Eileen Jones Family Trust were without merit. The more problematic claims against the insured related to the allegations involving Trust No. 1, Trust No. 2, and the alleged malpractice relating to the settlement between the claimants and their sister. As to Trust No. 1, it is alleged that in September 2001, the insured, as one of Trust No. 1's trustees, signed a quitclaim deed transferring title to ten parcels of a property held by the trust to Ms. Brown. The insured did not recall signing the deed, but advised that if he did so, Ms. Brown held herself out to be one of the trustees and, therefore, she was entitled to take such action. In addition to not recalling whether he signed the deed, the insured did not believe that he would have reviewed the trust documents, in which case he likely breached a standard of care by failing to review the trust or to obtain any independent confirmation that Ms. Brown was the trustee for Trust No. 1 before transferring the assets to her.

Ms. Brown used a 1031 exchange for the parcels and subsequently acquired two medical buildings in Beverly Hills and Malibu, California. The insured paid for a 15 percent interest in the Malibu building, but held a 30 percent interest in the profits. The claimants allege that the additional 15 percent interest held by the insured properly belongs to Trust No. 1. It is also alleged that in 2010, the insured, while acting as their attorney, asked the claimants to sign an agreement preserving and protecting his extra-profit interest. As the insured was the claimants' attorney at the time, this agreement violated applicable state law.

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The issues with Trust No. 2 and the settlement with Ms. Brown were intertwined. The claimants alleged that although the insured knew that Trust No. 2's assets should have been distributed to the beneficiaries, being the claimants and Ms. Brown, the insured helped Ms. Brown sell trust assets rather than distribute them. In connection with the sale of one of the assets for $15 million, the insured charged $5,000 to prepare a simple contract and failed to confirm that Ms. Brown was, in fact, a trustee for Trust No. 2. He also received $5,000 from Ms. Brown to prepare the sales contract. The claimants would have been able to demonstrate that the insured breached a standard of care by failing to confirm that Ms. Brown was entitled to sell the ten parcels of a property held by the trust. Additionally, after the sale, the proceeds were embezzled by a 1031 exchange accommodator. The claimants alleged that the insured advised them to settle their claims with Ms. Brown relating to the sale of the asset and her other actions relating to the trusts for $1.5 million. The settlement also included a release of the insured.

It appeared that an attorney-client relationship existed between the insured and the claimants relating to this settlement, as under applicable state law, an attorney-client relationship arises, based on the conduct of the parties, regardless of whether any formal arrangement exists. Here, the insured provided legal advice to the claimants regarding the proposed settlement and specifically recommended settlement over pursuing Ms. Brown through litigation. The insured made changes to the settlement agreement on the claimants' behalf. The claimants also paid the insured for his services in connection with the settlement. Notwithstanding the insured's denial, given the totality of the evidence in the context of applicable state law, the insured likely would have been deemed to have been the claimants' attorney for purposes of the settlement with Ms. Brown.

RESULTS

A settlement was ultimately reached, wherein the claimants received a total of $2.725 million, of which $925,000 was paid by the insured out of his own pocket. The insured also transferred his interest in any property and partnerships related to the Jones Family Trust to the claimants.

TAKEAWAY

In this instant claim, as the insured was the family attorney for more than 25 years, he should have sought a waiver from all family members, after recommending that they consult their own counsel and before agreeing to represent the claimants in pursuing their sister. In the event the family members were amenable to waiving any conflicts or purported conflicts, the insured should have prepared a written agreement confirming the scope of his representation of the claimants. Finally, the insured should never have negotiated a separate release for himself without advising his clients to consult with separate counsel.

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